



STATE OF MAINE
COMMISSION ON GOVERNMENTAL ETHICS
AND ELECTION PRACTICES
135 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0135

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August 13th, 1997

Minutes of the August 13th, 1997 meeting of the Commission on Governmental Ethics and Election Practices held in Room 122 of the State Office Building, Augusta.

Present: Chairman Peter B. Webster; members Linda W. Cronkhite, Harriet P. Henry, G. Calvin Mackenzie, Merle R. Nelson; Interim Counsel Paul Stern; Director Marilyn Canavan

At 9:05 a.m., Chairman Webster called the meeting to order. First, under routine business, members apprised the staff of several changes for the Commission roster. Next, Mr. Webster moved, and it was seconded, to accept the minutes of the June 18th, 1997 meeting with the following correction: with respect to the motion to dismiss a complaint lodged against Maine College Republicans, it was Ms. Cronkhite, and not Judge Henry, who offered a seconding motion.

The Commission then turned to Item #2 on the agenda which involved a reporting violation by Concerned Maine Families Political Action Committee (CMF). Staff findings showed that CMF had failed to report the forgiveness of debt as an in-kind contribution; that the Commission had contacted CMF and asked that officials report the transactions in their proper format, but that CMF had failed to comply. The staff further reported that the Commission had finally referred the matter to the Attorney General for enforcement; but that CNIF had failed to comply with Assistant Attorney General Howard's request that the transactions be properly disclosed. At the conclusion of the Commission's review of the facts presented, Mr. Mackenzie moved, and it was seconded, to resubmit the matter to the Attorney General. The motion was voted.

At that point, Ms. Nelson inquired as to whether or not the Attorney General planned to resolve the matter at a "time certain"; whereupon Counsel Stern responded that it would be handled in "seasonable fashion."

The Commission then discussed briefly its probe of the campaign finance reports of the Committee to Elect Annette Hoglund (CEAH). Staff findings showed that CEAH had staged a number of beano games to raise funds in support of Ms. Hoglund's candidacy; that she had reported to the Department of Public Safety the amounts raised and spent in staging the games; that the State Auditor was reviewing those reports; and that the Auditor's findings would be presented at the next meeting. Ms. Canavan explained that the purpose of the audit was to ascertain whether Ms. Hoglund had disclosed in her campaign finance reports the net realized

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from the games. She said it would then be incumbent on the Commission to determine what portion of the amount collected and spent in staging the games was reportable under the campaign finance laws and whether the campaign reports filed by CEAH fully complied with those laws. The staff was then urged to expedite its handling of the investigation so that the Commission could make a determination at the following meeting. Thereupon, a motion was made, seconded, and voted to table the matter until the next meeting.

At 9:22 a.m., the Commission focused its attention on the following two items:

- 1) the report of Interim Counsel Paul Stern with respect to the actions brought by the Maine Right to Life Committee and MCLU and the steps being taken to counter those actions;
- 2) preliminary findings of the staff with respect to a potential violation of the legislative ethics law.

These being confidential matters under the law, Mr. Mackenzie entertained a motion to consider the items in executive session. Judge Henry thereupon seconded and the motion was voted.

At 10:16 a.m. the Commission reconvened in regular session whereupon Mr. Webster moved that the staff be directed to contact the Legislator whose conduct was in question; to invite the Legislator to appear at the next regular meeting; and to ask that he be prepared to respond to questions the Commission may have about the matter undergoing review. The staff was also directed to invite a certain officer of the Legislature to attend the meeting as well. The motion was seconded and voted.

Next, the Commission considered the letter of complaint of Ms. Carol Palesky requesting that the Commission audit the campaign finance reports of Maine Citizens for Responsible Government (MCRG). Ms. Palesky alleged in her letter that the reports of INICRG contained a significant discrepancy; that the existence of that discrepancy necessitated the conduct of an audit. Staff findings indicated that Ms. Palesky's claims had no apparent basis in fact; that the discrepancy to which Ms. Palesky referred related to a technical problem; i.e., the manner in which NICRG reported the "carry forward" of its cash balance, and not to any violation of the campaign finance laws. On those findings, Mr. Mackenzie moved, and Judge Henry seconded, to deny Ms. Palesky's request for an audit of the reports. The motion was voted.

At that point Mr. Webster informed members that he had advised Attorney General Andrew Ketterer of the Commission's desire to be involved in selecting a successor to former Assistant Attorney General Cab Howard. He further advised that the Attorney General had appointed Assistant Attorney General Paul Stern to serve as Interim Counsel until a permanent appointment could be made.

The Chair then opened discussion on a staff recommendation calling for an amendment to the Legislative Ethics Law. Asked to explain details of the proposal, Ms. Canavan said the purpose was to establish more stringent procedures for handling delinquent or late Legislator income statements.



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She said the proposal would require that

- 1) a Legislator be notified in writing within three business days of the due date for filing income statements if the statement was not timely filed;
- 2) that penalties be assessed for lateness whether or not the delinquency is deemed to be willful;
- 3) that late filers be brought to the attention of the Commission and
- 4) that the responsibility for prescribing and distributing sources of income statements be transferred from the Secretary of State to the Commission.

She said the latter provision would be a mere formality since the Commission had been prescribing and distributing the forms for some years. At the conclusion of the discussion, Mr. Mackenzie moved, and Ms. Nelson seconded, to direct the staff to prepare and submit to the Commission at the next regular meeting a draft of the proposed legislation. The motion was voted.

Next, the Commission discussed details of a staff proposal designed to facilitate rule-making. Ms. Canavan explained that under the terms of the proposal, the Commission would invite select parties to meet and discuss key issues of Maine's Clean Election Act. She said that the Meetings would serve as a forum for interested parties to air concerns outside the rule-making process; that the meetings would provide the Commission with a broader base of information from which to draft in conducting formal rule-making; and that they might, in effect, defuse some of the controversy that typically follows extensive rule-making. Judge Henry expressed the view that members might find it useful to listen and observe as opposed to participating in such meetings.

The Chair then solicited the opinion of Mr. George Christie, a representative of Maine Citizens for Clean Elections, on the merits of the pending proposal. Mr. Christie expressed support for the idea saying that stakeholder meetings might serve to provide a forum in which some of the more controversial areas of the law could be worked out amicably before the formal rule-making process begins.

In the ensuing discussion, questions were raised as to whether participation or attendance by Commission members at stakeholder meetings would jeopardize the integrity of the rule-making process, and whether their participation while litigation is pending would pose any legal problems; for example, could statements that are made during the course of stakeholder meetings be used as evidence in Court? Members finally agreed to seek legal advice on those questions before adopting the proposal. The staff was thus directed to consult with Assistant Attorney General Paul Stern as to the legal ramifications for Commission members as well as stakeholders should the Commission decide to go forward with the proposal. It was also agreed that should the meetings be deemed an appropriate course of action, the Commission would seek the services of a facilitator after the next meeting.

Ms. Nelson then inquired as to whether there exists a written time-line showing when the various provisions of the Clean Elections Act become effective and whether a schedule coinciding with the time-line should be followed in implementing the rules. Thereupon, the staff agreed to compile such a summary for review at the next regular meeting.



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Next, there followed a lengthy discussion of the portion of the Clean Elections Act that requires the institution of electronic filing of reports. Ms. Canavan expressed the view that the components of a good program should include

- 1) diagnostics for the filer,
- 2) enhancement of in-house record-keeping and enforcement; and
- 3) more detailed and comprehensive public disclosure.

Mr. Mackenzie called automation the "most important piece of the new law." He said automation would magnify the opportunity for the public to know what its officials are doing if the electronic part of the program is done correctly.

He said the key for the designers of a system would be:

- 1) the desire of the Commission to enhance public disclosure and
- 2) an understanding of changing technology.

He then recommended the development of a web-based system asserting that such a system would best serve the needs of the viewing public. He said that a web-based system would allow filers to report information from a remote location that the information transmitted could be instantaneously incorporated into the Commission's data base and that there would be no need for the staff to re-enter the data in reports as the software could convert it into a precision format. On concluding, he distributed to members a preliminary plan for electronic automation and record-keeping.

Judge Henry then suggested that it would be useful for the Commission to invite a technical person to explain to members about automation.

There followed some discussion of the Commission's current funding limitations with respect to the development of a comprehensive automated filing system. Questions were raised as to whether the Commission had the financial resources to fund the position that may be needed to respond to questions about the technical aspects of electronic filing whether there would be enough money to fund kiosks; and whether the names and addresses of donors should be shown on the Web.

Ms. Nelson questioned whether it might be an invasion of an individual's right to privacy to put names of candidates and donors on the Web. She contended that the public does not necessarily have the right to know everything there is to know about a person -- that the Commission must be careful not to drive people out of office in its eagerness to enhance public disclosure.

On concluding the discussion, it was generally agreed that the Commission would need to consider a myriad of issues before going forward with plans to automate.

Next, the Commission discussed the latest version of the Commission's study report to the Joint Standing Committee on Legal and Veterans Affairs (CLVA). A question was raised as to whether the Commission could simply accept the report and not adopt it; whereupon Mr. Webster explained that the study had been requested some time ago by CLVA; that it was long



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overdue; and that the Commission had a responsibility to CLVA to submit the report as soon as possible. Ms. Canavan then said she hoped the members would reconsider one particular recommendation contained in the report; i.e., that the Commission be assigned responsibility for administering executive branch ethics. She expressed doubt that the Commission -- with current staffing levels -- would be able to fulfill the statutory obligations that administering such a law would entail, especially in light of the fact that the Clean Elections Act had added considerably to the staff's workload. She suggested as an alternative that the Commission consider recommending the establishment of an executive branch ethics board to administer executive ethics as several other states have done.

Whereupon Mr. Webster remarked that if the Commission is uncomfortable about the contents of the study, it could either amend the report or say it is unable to respond.

It was thereupon moved, seconded and voted to table the matter until the next meeting so as to allow members more time to examine the report.

Next, there was a brief educational session after which Mr. Mackenzie moved, and Mr. Webster seconded, that the Commission adjourn. The motion was voted. Adjournment was at 12:00 noon.

Sincerely,

Marilyn Canavan, Director